

HOUSE BILL No. 1368

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-11; IC 3-14-2; IC 3-14-3.

Synopsis: Absentee voting. Provides that a person may not give an application for an absentee ballot to the applicant if any of the information has been filled out before the application is given to the applicant. Requires an application for an absentee ballot to be filed within specific times. Requires an individual who files an absentee ballot application for another individual to sign an affidavit attesting to certain information. Requires an applicant for an absentee ballot to affirm the content of the application under the penalties for perjury. Permits a county election board member or an absentee voter board member to file an affidavit alleging that an absentee ballot application has not been filed according to law. Provides that a person may not engage in electioneering in the presence of an individual who possesses an absentee ballot. Requires certain persons who deliver an absentee ballot for a voter to affirm certain facts under penalties for perjury. Provides that certain actions relating to handling, possession, delivery, and voting absentee ballots are crimes. Makes other changes relating to absentee ballots.

Effective: Upon passage.

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January 20, 2004, read first time and referred to Committee on Elections and Apportionment.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1368

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-11-4-2, AS AMENDED BY P.L.126-2002,
2 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 2. (a) A voter who wants to vote by absentee
4 ballot must apply to the county election board for an official absentee
5 ballot.

6 (b) If an individual applies for an absentee ballot as the properly
7 authorized attorney in fact for a voter, the attorney in fact must attach
8 a copy of the power of attorney to the application.

9 (c) **A person may not provide an individual with an application
10 for an absentee ballot with the following information already
11 printed or otherwise set forth on the application when provided to
12 the individual:**

- 13 (1) **The name of the individual.**
14 (2) **The registration address of the individual.**
15 (3) **The mailing address of the individual.**
16 (4) **The date of birth of the individual.**
17 (5) **The voter identification number of the individual.**



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(6) The address to which the absentee ballot would be mailed, if different from the voter registration address of the individual.

(7) In a primary election, the major political party ballot requested by the individual.

(8) In a primary or general election, the types of absentee ballots requested by the individual.

(9) The reason why the individual is entitled to vote an absentee ballot:

(A) by mail; or

(B) before an absentee voter board (other than an absentee voter board located in the circuit court clerk's office or a satellite office);

in accordance with IC 3-11-4-18, IC 3-11-10-24, or IC 3-11-10-25.

(d) If the county election board determines that an absentee ballot application does not comply with subsection (c), the board shall deny the application.

(e) A person who receives a completed absentee ballot application from the individual who has applied for the absentee ballot shall file the application with the appropriate county election board not later than:

(1) noon seven (7) days after the individual receives the application; or

(2) the deadline set by Indiana law for filing the application with the board;

whichever occurs first.

(f) A person filing an absentee ballot application received from an individual under subsection (e) must sign an affidavit at the time of filing the application. The application must be in a form prescribed by the commission. The form must include the following:

(1) A statement of the full name, residence and mailing address, and daytime and evening telephone numbers (if any) of the person submitting the application.

(2) A statement of:

(A) the date the absentee ballot application was executed; and

(B) the location where the absentee ballot application was executed.

(3) A statement that the person filing the affidavit has complied with the Indiana laws governing the submission of

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absentee ballot applications.

(4) A statement that the person has no knowledge, or reason to believe, that:

(A) the individual whose application is to be filed is ineligible to vote or to cast an absentee ballot; or

(B) the individual whose application is to be filed did not properly complete and sign the application.

(5) A statement that the person is executing the affidavit under the penalties of perjury.

(6) A statement setting forth the penalties for perjury.

(g) The county election board shall record the date and time of the filing of the affidavit, and provide the person with a file stamped copy of the affidavit without collecting any copying fee.

SECTION 2. IC 3-11-4-5.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.1. (a) The commission shall prescribe the form of an application for an absentee ballot.

(b) This subsection does not apply to the form for an absentee ballot application to be submitted by an absent uniformed services voter or overseas voter that contains a standardized oath for those voters. The form of the application for an absentee ballot must:

(1) require the applicant to swear or affirm under the penalties of perjury that all of the information set forth on the application is true to the best of the knowledge and belief of the applicant; and

(2) set forth the penalties for perjury.

(c) The form prescribed by the commission shall require that a voter who:

(1) requests an absentee ballot; and

(2) is eligible to vote in the precinct under IC 3-10-11 or IC 3-10-12;

must include the affidavit required by IC 3-10-11 or a written affirmation described in IC 3-10-12.

(d) The form prescribed by the commission must require that a voter who requests an absentee ballot to vote by mail must state a specific reason on the application to set forth the basis for the voter's reasonable expectation of being absent from the county on election day.

SECTION 3. IC 3-11-4-17.5, AS AMENDED BY P.L.209-2003, SECTION 114, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.5. (a) Upon receiving an application for an absentee ballot, the county election board (or the

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absentee voter board in the office of the circuit court clerk) shall determine if the applicant is a voter of the precinct in which the applicant resides, according to the records of the county voter registration office. **If the members of the absentee voter board are unable to agree whether the applicant is a voter of the precinct, or whether the application has been completed and filed in accordance with Indiana or federal law, the issue shall be referred to the county election board for determination.** If the applicant is not a voter of the precinct according to the registration record (or if the application as completed and filed does not otherwise comply with ~~this chapter~~), **Indiana or federal law, as alleged under section 18.5 of this chapter**), the county election board shall deny the application.

(b) This subsection applies ~~after December 31, 2003~~, to an absentee ballot application submitted by an absent uniformed services voter or an overseas voter. In accordance with 42 U.S.C. 1973ff-1(d), if the application is denied, the county election board shall provide the voter with the reasons for the denial of the application. Unless the voter is present when the board denies the application, the board shall send a written notice stating the reasons for the denial to the voter. The notice must be sent:

- (1) not later than forty-eight (48) hours after the application is denied; and
- (2) to the voter at the address at which the voter requested that the absentee ballot be mailed.

(c) ~~This subsection applies after December 31, 2003~~. If the county election board determines that the applicant is a voter of the precinct under subsection (a), the board shall then determine whether:

- (1) the applicant was required to file any additional documentation under IC 3-7-33-4.5; and
- (2) the applicant has filed this documentation according to the records of the county voter registration office.

If the applicant has not filed the required documentation, the county election board shall approve the application if the application otherwise complies with this chapter. The board shall add a notation to the application and to the record compiled under section 17 of this chapter indicating that the applicant will be required to provide additional documentation to the county voter registration office under IC 3-7-33-4.5 before the absentee ballot may be counted.

(d) If the applicant:

- (1) is a voter of the precinct according to the registration record;
- (2) states on the application that the applicant resides at an address that is within the same precinct but is not the same

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address shown on the registration record; and
 (3) after December 31, 2005, provides a voter identification
 number on the application to permit transfer of registration under
 IC 3-7-13-13;

the county election board shall direct the county voter registration
 office to transfer the applicant's voter registration address to the
 address within the precinct shown on the application. The applicant's
 application for an absentee ballot shall be approved if the applicant is
 otherwise eligible to receive the ballot under this chapter.

SECTION 4. IC 3-11-4-18, AS AMENDED BY P.L.209-2003,
 SECTION 116, IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) If a voter satisfies any
 of the ~~following~~, **conditions described in IC 3-11-10-24(a)**, the county
 election board shall, at the request of the voter, mail the official ballot,
 postage fully prepaid, to the voter at the address stated in the
 application.

(1) ~~The voter will be absent from the county on election day.~~

(2) ~~The voter will be absent from the precinct of the voter's
 residence on election day because of service as:~~

(A) ~~a precinct election officer under IC 3-6-6;~~

(B) ~~a watcher under IC 3-6-8; IC 3-6-9; or IC 3-6-10;~~

(C) ~~a challenger or pollbook holder under IC 3-6-7; or~~

(D) ~~a person employed by an election board to administer the
 election for which the absentee ballot is requested.~~

(3) ~~The voter will be confined on election day to the voter's
 residence; to a health care facility; or to a hospital because of an
 illness or injury.~~

(4) ~~The voter is a voter with disabilities.~~

(5) ~~The voter is an elderly voter.~~

(6) ~~The voter is prevented from voting due to the voter's care of
 an individual confined to a private residence because of illness or
 injury.~~

(7) ~~The voter is scheduled to work at the person's regular place of
 employment during the entire twelve (12) hours that the polls are
 open.~~

(8) ~~The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.~~

(b) ~~This subsection applies after December 31, 2003.~~ If the county
 election board mails an absentee ballot to a voter required to file
 additional documentation with the county voter registration office
 before voting by absentee ballot under this chapter, the board shall
 include a notice to the voter in the envelope mailed to the voter under
 section 20 of this chapter. The notice must inform the voter that the

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voter must file the additional documentation required under IC 3-7-33-4.5 with the county voter registration office not later than noon on election day for the absentee ballot to be counted. The commission shall prescribe the form of this notice under IC 3-5-4-8.

(c) **Except as provided in section 18.5 of this chapter**, the ballot shall be mailed:

- (1) on the day of the receipt of the voter's application; or
- (2) not more than five (5) days after the date of delivery of the ballots under section 15 of this chapter;

whichever is later.

(d) In addition to the ballot mailed under subsection (c), the county election board shall mail a special absentee ballot for overseas voters.

(e) **Except as provided in section 18.5 of this chapter**, the ballot described in subsection (d):

- (1) must be mailed:
 - (A) on the day of the receipt of the voter's application; or
 - (B) not more than five (5) days after the date of delivery of the ballots under section 13(b) of this chapter;

whichever is later; and

- (2) may not be mailed after the absentee ballots described by section 13(a) of this chapter have been delivered to the circuit court clerk or the clerk's authorized deputy.

(f) This subsection applies after December 31, 2005. As required by 42 U.S.C. 15481, an election board must establish a voter education program (specific to a paper ballot or optical scan ballot card provided as an absentee ballot under this chapter) to notify a voter of the effect of casting multiple ballots for a single office.

(g) This subsection applies after December 31, 2005. As provided by 42 U.S.C. 15481, when an absentee ballot is mailed under this section, the mailing must include:

- (1) information concerning the effect of casting multiple votes for an office; and
- (2) instructions on how to correct the ballot before the ballot is cast and counted, including the issuance of replacement ballots.

SECTION 5. IC 3-11-4-18.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 18.5. (a) Upon receipt of an absentee ballot application, a member of the county election board or the member of an absentee voter board may file an affidavit with the county election board alleging that the application has not been executed or filed in accordance with Indiana or federal law.**

(b) The affidavit must be in a form prescribed by the

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commission and state the following:

- (1) The name and title of the individual filing the affidavit.
- (2) A brief statement of the facts known or believed by the individual as to why the application has not been executed or filed in accordance with Indiana or federal law.
- (3) A statement that the individual is executing the affidavit under the penalties of perjury.
- (4) A statement setting forth the penalties for perjury.

(c) Upon the filing of the affidavit, the approval or denial of the application shall be referred to the county election board, which shall promptly conduct a hearing on the matter.

(d) The county election board shall deny the application if the board determines by a preponderance of the evidence that the application was not completed or filed in accordance with Indiana or federal law.

SECTION 6. IC 3-11-4-21, AS AMENDED BY P.L.209-2003, SECTION 117, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) On the other side of the envelope required by section 20 of this chapter shall be printed an affidavit in conformity with 42 U.S.C. 1973ff-1(b), providing that the voter affirms under penalty of perjury that the following information is true:

- (1) The name of the precinct and township (or ward and city or town).
- (2) That the voter is:
 - (A) a resident of; or
 - (B) entitled under IC 3-10-11 or IC 3-10-12 to vote in; the precinct.
- (3) The voter's complete residence address, including the name of the city or town and county.
- (4) That the voter is entitled to vote in the precinct, the type of election to be held, and the date of the election.
- (5) That:
 - (A) the voter has personally marked the enclosed ballot or ballots in secret and has enclosed them in this envelope and sealed them without exhibiting them to any other person;
 - (B) the voter personally marked the enclosed ballot or ballots, enclosed them in this envelope, and sealed them with the assistance of an individual whose name is listed on the envelope and who affirms under penalty of perjury that the voter was not coerced or improperly influenced by the individual assisting the voter or any other person, in a manner

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prohibited by state or federal law, to cast the ballot for or against any candidate, political party, or public question; or (C) as the properly authorized attorney in fact for the undersigned under IC 30-5-5-14, the attorney in fact affirms the voter personally marked the enclosed ballot or ballots in secret and enclosed them in this envelope and sealed them without exhibiting them to the attorney in fact or to any other person.

(6) The date and the voter's signature.

(b) If the affidavit is signed by an attorney in fact, the name of the attorney in fact must be indicated.

(c) A guardian or conservator of an individual may not sign an affidavit for the individual under this section unless the guardian or conservator also holds a power of attorney authorizing the guardian or conservator to sign the affidavit.

(d) The side of the envelope containing this affidavit must also set forth the penalties for perjury.

SECTION 7. IC 3-11-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A voter voting by absentee ballot may mark a ballot with a pen or a lead pencil.

(b) A person may not engage in electioneering (as defined by IC 3-14-3-16) in the presence of a voter whom the person knows possesses an absentee ballot provided to the voter in accordance with Indiana law.

SECTION 8. IC 3-11-10-24, AS AMENDED BY P.L.126-2002, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24. (a) Except as provided in subsection (b), a voter who satisfies any of the following is entitled to vote by mail:

- (1) The voter will be absent from the county on election day.
- (2) The voter will be absent from the precinct of the voter's residence on election day because of service as:
 - (A) a precinct election officer under IC 3-6-6;
 - (B) a watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10;
 - (C) a challenger or pollbook holder under IC 3-6-7; or
 - (D) a person employed by an election board to administer the election for which the absentee ballot is requested.
- (3) The voter will be confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury.
- (4) The voter is a voter with disabilities.
- (5) The voter is an elderly voter.
- (6) The voter is prevented from voting due to the voter's care of

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an individual confined to a private residence because of illness or injury.

(7) The voter is scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open.

(8) The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.

(b) A voter with disabilities who:

(1) is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope; and

(2) requests that the absentee ballot be delivered to an address within Indiana;

must vote before an absentee voter board under section 25(b) of this chapter.

(c) If a voter receives an absentee ballot by mail, the voter shall personally mark the ballot in secret and seal the marked ballot inside the envelope provided by the county election board for that purpose. The voter shall then:

(1) deposit the sealed envelope in the United States mail for delivery to the county election board; or

(2) authorize a member of the voter's household or the individual designated as the voter's attorney in fact to deposit the envelope in the United States mail or deliver the sealed envelope in person to the county election board.

(d) If a member of the voter's household or the voter's attorney in fact delivers the sealed envelope containing a voter's absentee ballot to the county election board, the individual delivering the ballot shall complete an affidavit in a form prescribed by the commission. The affidavit must contain the following:

(1) The name and residence address of the voter whose absentee ballot is being delivered.

(2) A statement of the full name, residence and mailing address, and daytime and evening telephone numbers (if any) of the individual delivering the absentee ballot.

(3) A statement indicating whether the individual is a member of the voter's household, or is the attorney in fact for the voter. If the individual is the attorney in fact for the voter, the individual must attach a copy of the power of attorney for the voter, unless a copy of this document has already been filed with the county election board.

(4) The following information:

(A) The date the absentee ballot was delivered by the voter to the individual delivering the absentee ballot to the

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county election board.

(B) The location where the absentee ballot was delivered by the voter to the individual delivering the absentee ballot to the county election board.

(5) A statement that the individual delivering the absentee ballot has complied with the Indiana laws governing absentee ballots.

(6) A statement that the individual is executing the affidavit under the penalties of perjury.

(7) A statement setting forth the penalties for perjury.

(e) The county election board shall record the date and time that the affidavit under subsection (d) was filed with the board.

(f) After a voter has mailed an absentee ballot to the office of the circuit court clerk, the voter may not recast a ballot, except as provided in:

(1) section 1.5 of this chapter; or

(2) section 33 of this chapter.

SECTION 9. IC 3-14-2-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. A person who does either of the following, knowing that an individual is ineligible to register to vote or to vote, commits absentee ballot fraud, a Class D felony:**

(1) Solicits the individual to complete an absentee ballot application.

(2) Solicits the individual to submit an absentee ballot application to a county election board.

SECTION 10. IC 3-14-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5. (a) A person who recklessly destroys or fails to deliver an absentee ballot application to the proper officer after the affidavit has been executed in accordance with IC 3-11-4, commits a Class A misdemeanor.**

(b) A person who recklessly destroys or fails to file or deliver to the proper officer a registration affidavit or form of registration after ~~it~~ **the affidavit or form** has been executed commits a Class A misdemeanor.

SECTION 11. IC 3-14-2-16, AS AMENDED BY P.L.38-1999, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 16. A person who knowingly does any of the following commits a Class D felony:**

(1) Applies for or receives a ballot in a precinct other than that precinct in which the person is entitled to vote.

(2) Except when receiving assistance under IC 3-11-9, shows a

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1 ballot after it is marked to another person in such a way as to
 2 reveal the contents of it or the name of a candidate for whom the
 3 person has voted.

4 (3) Except when offering assistance requested by a voter in
 5 accordance with IC 3-11-9, examines a ballot that a voter has
 6 prepared for voting or solicits the voter to show the ballot.

7 (4) Receives from a voter a ballot prepared by the voter for
 8 voting, except:

9 (A) the inspector;

10 (B) a member of the precinct election board temporarily acting
 11 for the inspector;

12 (C) a member of a county election board or an absentee voter
 13 board acting under IC 3-11-10; or

14 (D) a member of the voter's household, ~~or~~ an individual
 15 designated as attorney in fact for the voter, **or an employee of**
 16 **the United States Postal Service**, when delivering an
 17 envelope containing an absentee ballot under IC 3-11-10-1.

18 (5) Receives a ballot from a person other than one of the poll
 19 clerks or authorized assistant poll clerks.

20 (6) Delivers a ballot to a voter to be voted, unless the person is:

21 (A) a poll clerk or authorized assistant poll clerk; or

22 (B) a member of a county election board or an absentee voter
 23 board acting under IC 3-11-10.

24 (7) Delivers a ballot (other than an absentee ballot) to an inspector
 25 that is not the ballot the voter receives from the poll clerk or
 26 assistant poll clerk.

27 (8) Delivers an absentee ballot to a team of absentee ballot
 28 counters appointed under IC 3-11.5-4-22, a county election board,
 29 a circuit court clerk, or an absentee voting board under IC 3-11-10
 30 that is not the ballot cast by the absentee voter.

31 **(9) Possesses an unmarked absentee ballot, unless the person**
 32 **is authorized to possess the absentee ballot under this title as**
 33 **any of the following:**

34 (A) A printer.

35 (B) A county election board member.

36 (C) An absentee voter board member.

37 (D) An employee of the United States Postal Service when
 38 delivering an envelope containing an absentee ballot.

39 (E) An individual authorized to deliver an absentee ballot
 40 in a sealed envelope under IC 3-11-10-24.

41 (F) An absentee ballot counter under IC 3-11.5.

42 (G) A provisional ballot counter.

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(H) A precinct election officer.

(I) The voter who applied for the absentee ballot.

SECTION 12. IC 3-14-3-16, AS AMENDED BY P.L.66-2003, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) As used in this section, "electioneering" includes expressing support or opposition to any candidate or political party or expressing approval or disapproval of any public question in any manner that could reasonably be expected to convey that support or opposition to another individual.

(b) A person who knowingly does any electioneering:

(1) on election day within:

(A) the polls; or

(B) ~~fifty (50) feet of the entrance to the polls; or chute;~~

(2) within an area in the office of the circuit court clerk used by an absentee voter board to permit an individual to cast an absentee ballot; or

(3) in the presence of a voter whom the person knows possesses an absentee ballot provided to the voter in accordance with Indiana law;

commits a Class A misdemeanor.

SECTION 13. IC 3-14-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. A person who, for the purpose of inducing or procuring another person to:

(1) apply for or cast an absentee ballot; or

(2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention, gives, offers, or promises to any person any money or other property;

commits a Class D felony.

SECTION 14. IC 3-14-3-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. A person who, for the purpose of inducing or procuring a voter to:

(1) apply for or cast an absentee ballot; or

(2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention, receives, accepts, requests, or solicits from any person any money or other property;

commits a Class D felony.

SECTION 15. An emergency is declared for this act.

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